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FILED
DEC 31 1902
JAMES H. McKENNEY,
Clerk.

THE SUPREME COURT OF THE UNITED STATES.

Sup. 165

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY,

Petitioner,

vs.

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. JONES, JR., MARY F. LAUGHLIN, MARY McM. LAUGHLIN, MAGDELAINE F. LAUGHLIN, WILLIS L. KING, HENRY A. LAUGHLIN, JAMES LAUGHLIN, JR., JAMES B. LAUGHLIN, CHARLES C. BRIGGS, ELIZA L. PHILLIPS and BENJAMIN F. JONES and WILLIAM L. JONES, trustees under the last will and testament of THOMAS M. JONES, JR., deceased, for WILLIAM L. JONES, MARY J. HILLIARD and THOMAS M. JONES, JR., partners doing business under the firm name and style of JONES & LAUGHLIN, Limited:

Respondents.

ON PETITION FOR A WRIT OF CERTORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS OF THE SIXTH CIRCUIT.

TALFOURD P. LINN and
OUTHWAITE, LINN & THURMAN,
Counsel for Respondents.

THE SUPREME COURT OF THE UNITED STATES.

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BRIEF FOR RESPONDENTS.

There is no doubt of the power of this Court to grant the prayer of the petitioner herein, providing the case be one in which the discretion of the Court acting in such matters, should be exercised in petitioner's behalf.

The sole question for the Court to consider is, does the case present such a state of facts, as will justify the affirmative action of the Court, by reason either of its "peculiar gravity," the "importance of the question involved," "the necessity of avoiding conflict between two or more courts of appeal or between courts of appeal and courts of the State," or some "matter effecting the interests of this nation in its internal or external relations?"

For respondents, we respectfully submit, that the case as it now stands before the Court, does not present a state of facts bringing it within the rules laid down in *Forsythe* v. *The City of Hammond*, and other kindred cases.

The record of the case shows—that on April 13th, 1894, the legislature of the State of Ohio passed an act known as the Mechanic's Lien Act, by the provisions of which, direct liens were given to all persons furnishing labor or materials in or about the construction of any building within the state irrespective of the condition of account or contract between the owner of the building and such material man or laborer, upon the compliance, by the person seeking to enforce the lien, with certain requirements of the statute;

That after the passage of the said act, and before any interpretation thereof by the Supreme Court of the State of Ohio, respondents, who were residents and citizens of the

State of Pennsylvania, furnished, for the construction of a certain building within the State of Ohio, a large amount of material;

That after said material had been furnished and used, the Supreme Court of the State of Ohio, in a suit therein pending, to which these respondents were not parties, declared such act in conflict with certain general provisions of the constitution of the State of Ohio, and liens taken thereunder invalid;

That respondents, as residents and citizens of the State of Pennsylvania, thereupon filed their bill in the Circuit Court of the United States, for the Southern District of Ohio, seeking to enforce their lien, and invoking the jurisdiction of said Circuit Court by reason of their citizenship of the State of Pennsylvania, and for the further reason that their contract having been entered into and completed after the passage of said act of the legislature, and before any interpretation thereof by the Supreme Court of Ohio, and their right of action having accrued under such circumstances, they were entitled to relief as such non-residents, and to the independent action of the United States Court, and the interpretation by the same of the constitutionality of the act in question independently of the decision of the Supreme Court of Ohio;

That the said Circuit Court thereupon decided, that respondents had a right to the independent interpretation of the United States Courts upon the constitutionality of the question involved, but that, in the opinion of the said Circuit Court, the Supreme Court of the State of Ohio was right, in declaring said legislative act unconstitutional;

That thereafter, on appeal to the Circuit Court of Appeals for the Sixth Circuit, the decision of said Circuit Court was

reversed, and said Circuit Court of Appeals decided, that respondents were entitled to the relief prayed for, and that said legislative act was constitutional;

That upon application to this Court for a writ of *certiorari* to the Circuit Court of Appeals, said writ was granted, but the case remanded for amendment for the reasons given in 177 United States Supreme Court Reports, 449.

After the adjudication of this Court upon the question of citizenship, as appears by the record, the case, after amendment as to parties, was heard in full by the Circuit Court below, and a judgment rendered upon all points in favor of the complainants below. This judgment, as also appears by the record, was reviewed in full by the United States Circuit Court of Appeals of the Sixth Circuit, and by it affirmed, after a full hearing. (See 116 Federal Reporter, 793.)

The personnel of the Court of Appeals passing upon the case at its last hearing was different from that of the Court passing upon the case at its former hearing, as reported in the 86 Federal Reporter, 370. At the first hearing of the Court of Appeals, Justices LURTON, TAFT and CLARK were present and decided the case. At the last hearing Justices LURTON, DAY and SEVERNS were present and heard and decided the case.

We have, therefore, no conflict of decision between Federal Courts upon the case. Both the Circuit Court which rendered the judgment below and the Circuit Court of Appeals which affirmed it, are in accord, and both were in accord with the judgment of the former Circuit Court of Appeals.

The only conflict of decisions is the conflict between the Federal Courts and the Supreme Court of Ohio, not upon the

facts involved in this case, but upon the bare question of the constitutionality of the law known as the Mechanic's Lien Law of Ohio.

The parties to this case were not parties to the case cited by petitioner as having been decided by the Supreme Court of Ohio, to-wit: *Young* v. *The Lion Hardware Company*, 55 Ohio State, 523, but are parties, who, by reason of non-residence alone, have invoked the independent judgment of the Federal Courts as to the validity of their claim.

The petitioner and respondents are the sole parties to this controversy, and the decisions of the Circuit Court of Appeals, and the Circuit Court were upon their rights only.

It is admitted that the decision of the Circuit Court of Appeals upon the question involved, but for the provisions of Section 6 of the act of 1891, providing for the writ of *certiorari*, would have been final.

The case presented does not affect "the interests of this nation in its internal or external relations," nor is it one which presents a question of any general importance, the sole interests involved being those of the petitioner and respondents, and the sole controversy being over the recovery of a certain sum of money. The only ground upon which petitioner insists upon its right to the writ is, that the case presents a conflict between the Federal Courts of Appeals and the Courts of the State of Ohio, and that by reason of such conflict, possibilities of future collision between such Courts may arise from such adverse decisions. In our judgment no such possibilities of collision exist. No other interests are involved than those of petitioner and respondents. The adverse decision of the Circuit Court of Appeals can affect no other interests. The decision of the Supreme Court of the State of Ohio is still the law of that State until

reversed, and must necessarily govern all persons whether citizens of that State or citizens of other States, contracting in the State of Ohio, after the rendition of such decision.

The United States Courts in any case arising upon a contract made after the rendition of such decision would be bound, under the established rules, to follow such decision, and to enforce the same as the law of the State.

The sole ground upon which relief was given respondents in this case was, that their contract was entered into and their right of action accrued before the rendition of such decision. The decision of the Circuit Court of Appeals applied to this controversy alone, and to no other controversy, and decided no rights of other persons, nor is it binding as a future rule of action in the State of Ohio upon any person therein, or upon any foreign citizen contracting therein.

In this respect the case differs materially from the case of *Forsythe* v. *Hammond*, relied upon by petitioner. In that case this Court granted the writ for the distinct reason that the adverse decisions of the Circuit Court of Appeals, and of the Supreme Court of Indiana, would involve conflicts as to other property affected by the same legislative action.

The language of the Court is:

> "That tract of plaintiffs was not on the extreme limit of the lands sought to be incorporated into the city, and if the decision of the Circuit Court of Appeals was enforced there would be a tract of a few hundred acres within the exterior boundaries of the city of Hammond, as defined by the judgment of the Supreme Court of the State, withdrawn from the city's jurisdiction, and in fact, excepted from its territorial limits. All the unfortunate possibilities of conflict and collision which might arise from these adverse decisions were suggested when this application for *certiorari* was made."

Relying upon the rule established in *Forsythe* v. *Hammond*, and in view of the difference between the facts in that case and the case at bar, we submit that the writ prayed for herein should not be granted.

Respectfully submitted,

TALFOURD P. LINN and
OUTHWAITE, LINN & THURMAN,
Counsel for Respondents.